

## § 270.12d1-1

## 17 CFR Ch. II (4-1-11 Edition)

by that company by directing to the broker or dealer:

(i) The company's portfolio securities transactions; or

(ii) Any remuneration, including but not limited to any commission, mark-up, mark-down, or other fee (or portion thereof) received or to be received from the company's portfolio transactions effected through any other broker (including a government securities broker) or dealer (including a municipal securities dealer or a government securities dealer); and

(2) Direct its portfolio securities transactions to a broker or dealer that promotes or sells shares issued by the company, unless the company (or its investment adviser):

(i) Is in compliance with the provisions of paragraph (h)(1) of this section with respect to that broker or dealer; and

(ii) Has implemented, and the company's board of directors (including a majority of directors who are not interested persons of the company) has approved, policies and procedures reasonably designed to prevent:

(A) The persons responsible for selecting brokers and dealers to effect the company's portfolio securities transactions from taking into account the brokers' and dealers' promotion or sale of shares issued by the company or any other registered investment company; and

(B) The company, and any investment adviser and principal underwriter of the company, from entering into any agreement (whether oral or written) or other understanding under which the company directs, or is expected to direct, portfolio securities transactions, or any remuneration described in paragraph (h)(1)(ii) of this section, to a broker (including a government securities broker) or dealer (including a municipal securities dealer or a government securities dealer) in consideration for the promotion or sale of shares issued by the company or any other registered investment company.

[45 FR 73905, Nov. 7, 1980, as amended at 60 FR 11885, Mar. 2, 1995; 61 FR 49011, Sept. 17, 1996; 62 FR 51765, Oct. 3, 1997; 66 FR 3758, Jan. 16, 2001; 69 FR 46389, Aug. 2, 2004; 69 FR 54733, Sept. 9, 2004]

## § 270.12d1-1 Exemptions for investments in money market funds.

(a) *Exemptions for acquisition of money market fund shares.* If the conditions of paragraph (b) of this section are satisfied, notwithstanding sections 12(d)(1)(A), 12(d)(1)(B), 17(a), and 57 of the Act (15 U.S.C. 80a-12(d)(1)(A), 80a-12(d)(1)(B), 80a-17(a), and 80a-56), and § 270.17d-1:

(1) An investment company ("acquiring fund") may purchase and redeem shares issued by a money market fund; and

(2) A money market fund, any principal underwriter thereof, and a broker or a dealer may sell or otherwise dispose of shares issued by the money market fund to an acquiring fund.

(b) *Conditions—(1) Fees.* The acquiring fund pays no sales charge, as defined in rule 2830(b)(8) of the Conduct Rules of the NASD ("sales charge"), or service fee, as defined in rule 2830(b)(9) of the Conduct Rules of the NASD, charged in connection with the purchase, sale, or redemption of securities issued by a money market fund ("service fee"); or the acquiring fund's investment adviser waives its advisory fee in an amount necessary to offset any sales charge or service fee.

(2) *Unregistered money market funds.* If the money market fund is not an investment company registered under the Act:

(i) The acquiring fund reasonably believes that the money market fund satisfies the following conditions as if it were a registered open-end investment company:

(A) Operates in compliance with § 270.2a-7;

(B) Complies with sections 17(a), (d), (e), 18, and 22(e) of the Act (15 U.S.C. 80a-17(a), (d), (e), 80a-18, and 80a-22(e));

(C) Has adopted procedures designed to ensure that it complies with sections 17(a), (d), (e), 18, and 22(e) of the Act (15 U.S.C. 80a-17(a), (d), (e), 80a-18, and 80a-22(e)), periodically reviews and updates those procedures, and maintains books and records describing those procedures;

(D) Maintains the records required by §§ 270.31a-1(b)(1), 270.31a-1(b)(2)(ii), 270.31a-1(b)(2)(iv), and 270.31a-1(b)(9); and

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(E) Preserves permanently, the first two years in an easily accessible place, all books and records required to be made under paragraphs (b)(2)(i)(C) and (D) of this section, and makes those records available for examination on request by the Commission or its staff; and

(ii) The adviser to the money market fund is registered with the Commission as an investment adviser under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3).

(c) *Exemption from certain monitoring and recordkeeping requirements under § 270.17e-1.* Notwithstanding the requirements of §§ 270.17e-1(b)(3) and 270.17e-1(d)(2), the payment of a commission, fee, or other remuneration to a broker shall be deemed as not exceeding the usual and customary broker's commission for purposes of section 17(e)(2)(A) of the Act if:

(1) The commission, fee, or other remuneration is paid in connection with the sale of securities to or by an acquiring fund;

(2) The broker and the acquiring fund are affiliated persons because each is an affiliated person of the same money market fund; and

(3) The acquiring fund is an affiliated person of the money market fund solely because the acquiring fund owns, controls, or holds with power to vote five percent or more of the outstanding securities of the money market fund.

(d) *Definitions.* (1) *Investment company* includes a company that would be an investment company under section 3(a) of the Act (15 U.S.C. 80a-3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Act (15 U.S.C. 80a-3(c)(1) and 80a-3(c)(7)).

(2) *Money market fund* means:

(i) An open-end management investment company registered under the Act that is regulated as a money market fund under § 270.2a-7; or

(ii) A company that would be an investment company under section 3(a) of the Act (15 U.S.C. 80a-3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Act (15 U.S.C. 80a-3(c)(1) and 80a-3(c)(7)) and that:

(A) Is limited to investing in the types of securities and other invest-

ments in which a money market fund may invest under § 270.2a-7; and

(B) Undertakes to comply with all the other requirements of § 270.2a-7, except that, if the company has no board of directors, the company's investment adviser performs the duties of the board of directors.

[71 FR 36655, June 27, 2006]

### § 270.12d1-2 Exemptions for investment companies relying on section 12(d)(1)(G) of the Act.

(a) *Exemption to acquire other securities.* Notwithstanding section 12(d)(1)(G)(i)(II) of the Act (15 U.S.C. 80a-12(d)(1)(G)(i)(II)), a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act (15 U.S.C. 80a-12(d)(1)(G)) to acquire securities issued by another registered investment company that is in the same group of investment companies may acquire, in addition to Government securities and short-term paper:

(1) Securities issued by an investment company, other than securities issued by another registered investment company that is in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act (15 U.S.C. 80a-12(d)(1)(A) or 80a-12(d)(1)(F));

(2) Securities (other than securities issued by an investment company); and

(3) Securities issued by a money market fund, when the acquisition is in reliance on § 270.12d1-1.

(b) *Definitions.* For purposes of this section, money market fund has the same meaning as in § 270.12d1-1(d)(2).

[71 FR 36655, June 27, 2006]

### § 270.12d1-3 Exemptions for investment companies relying on section 12(d)(1)(F) of the Act.

(a) *Exemption from sales charge limits.* A registered investment company ("acquiring fund") that relies on section 12(d)(1)(F) of the Act (15 U.S.C. 80a-12(d)(1)(F)) to acquire securities issued by an investment company ("acquired fund") may offer or sell any security it issues through a principal underwriter or otherwise at a public offering price that includes a sales load of more than 1½ percent if any sales charges and service fees charged with